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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,407	11/25/2003	Ken Endelman	40070.15US01	2667
23552	7590	06/14/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			AMERSON, LORI BAKER	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/723,407	Applicant(s) ENDELMAN ET AL.	
	Examiner L. Amerson	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-18, 20-29, 32-36 is/are rejected.
- 7) ☒ Claim(s) 15, 19, 30 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1, 4, 11, 21, and 24 the word "means" is preceded by the word(s) "having" or "the" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

a. Claims 1, 8, 21 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Endelman. Endelman discloses a frame having a head and foot end (12, 14, 16), a pair of spaced apart parallel track members (18), a moveable carriage (22), a plurality of elongated elastic members (30) and an elastic member anchor bar and carriage stop assembly (62, 64). The track members are tubular with a rectangular cross section (fig. 4).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

b. Claims 2-7, 9-14, 16-18, 20, 22-27 and 29, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Endelman '425 as applied to claim 1 above, and further in view of Liao. Endelman discloses all of the limitations of the claimed invention except for tenons. Thus, Liao teaches tenons (14) having parallel sides where a track has an elongated slot (21) to receive the tenons (fig. 3). The tenon is rectangular in cross section (fig. 2). The slot in the track has spaced stop portions (fig. 3). Each parallel side of the tenon is parallel to the slot in the track where they engage the slot and opposite sides of the tenon are parallel to the slot in the track (figs. 2-3). Regarding the language, "defining spaced locked positions", "wherein the anchor bar is operable to move between locked positions only when said anchor bar is rotated to an unlocked position", "only when the anchor bar is in the unlocked position", "in the locked position" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 16, '425 discloses a track with a tubular shape having a slot (fig. 3) parallel to the track and an anchor bar with opposite ends (fig. 4) that extends into the slot where the slot has a plurality of spaced positions engaging the bar (fig. 3-4). Regarding the language "to

prevent movement along the slot when the anchor bar is in a locked position” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claims 17-18, Figure 5 of Liao show each end of the bar having a tenon and engaging the bar. Regarding the language “in the locked position” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 32, Endelman discloses a latching mechanism (80)

c. Claims 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Endelman 2003/0195095. Endelman discloses a frame, a movable carriage (fig. 1) having a set of support rollers and guide members (fig. 14), and a plurality of elastic members (24). As to claim 34, the device includes an anchor bar and carriage assembly and track members (fig. 1). As to claim 35, see the paragraph for claim 8 above.

d. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Endelman '704. Endelman discloses a frame, movable carriage, plurality of elastic members and adjustable foot bar assembly mounted to a frame in a pair of slots (figs. 11-13). Regarding the language “positioned parallel to said track members wherein said slots extend along an outer wall of said frame to selectively position said foot bar assembly at any one of a plurality of spaced positions from said foot end to said head end of said frame” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure

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3. Claims 15, 19, 30-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. And Thur. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson